

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PUBLIC HEARING
of ARM 17.8.749, 17.8.759, )	ON PROPOSED AMENDMENT
17.8.763 and 17.8.764 )	
pertaining to conditions for )	
issuance or denial of permits, )	(AIR QUALITY)
review of permit applications, )	
revocation of permits and )	
administrative amendment to )	
permits )	

TO: All Concerned Persons

1. On July 30, 2003, at 10:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 21, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.749 CONDITIONS FOR ISSUANCE OR DENIAL OF PERMIT

(1) through (6) remain the same.

(7) If the department denies an application for a Montana air quality permit it shall notify the applicant in writing of the reasons for the permit denial and advise the applicant of the right to appeal the department's decision to the board as provided in 75-2-211, MCA. ~~Service of the department's decision to deny a permit must be made as provided in the Montana Rules of Civil Procedure, except that the applicant may agree in writing to service by mail.~~

(8) through (8)(c) remain the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, MCA

17.8.759 REVIEW OF PERMIT APPLICATIONS (1) through (3) remain the same.

(4) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by ARM 17.8.748 and the applicant of the department's preliminary

determination. The notice must specify that comments may be submitted on the information submitted by the applicant and on the department's preliminary determination. The notice must also specify the following:

(a) remains the same.

(b) the date by which all comments on the preliminary determination must be submitted in writing, which must be within ~~15 days after the notice is mailed; and:~~

(i) 30 days after the notice is mailed for applications subject to the federal air permitting provisions of 42 USC 7475, 7503, or 7661 or the provisions of 75-2-215, MCA, or applications that require preparation of an environmental impact statement; or

(ii) 15 days after the notice is mailed for all other applications; and

~~(c) that unless the review period is extended pursuant to (5), the date by which a final decision must be made pursuant to 75-2-211(9), MCA within 60 days after a complete application is submitted to the department as required by 75-2-211, MCA. The notice must specify the date upon which the 60 day review period expires, the person from whom a copy of the final decision may be obtained, and the procedure for requesting a hearing before the board concerning the department's final decision.~~

(5) remains the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, MCA

17.8.763 REVOCATION OF PERMIT (1) remains the same.

(2) The department shall notify the permittee in writing of its intent to revoke a permit or a portion of a permit. ~~The department shall serve the notice as provided in ARM 17.8.749.~~ The department's decision to revoke a permit or any portion of a permit becomes final when 15 days have elapsed after service the permittee's receipt of the notice unless the permittee requests a hearing before the board.

(3) When the department revokes a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after service receipt of the department's notice of intent to revoke the permit. Filing a request for a hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(4) remains the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, MCA

17.8.764 ADMINISTRATIVE AMENDMENT TO PERMIT

(1) through (1)(c) remain the same.

(2) The department shall notify the permittee in writing of any proposed amendments to the permit. ~~The department shall serve the notice as provided for in ARM 17.8.749.~~ The permit is deemed amended in accordance with the notice when 15 days have

elapsed after service of the notice from the date of the department's decision to amend the permit, unless the permittee requests a hearing before the board.

(3) When the department amends a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after ~~service of the department's notice of intent~~ the department issues its decision to amend the permit. Filing a request for hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(4) remains the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, MCA

REASON: HB 427, enacted by the 2003 Montana Legislature, requires the Board to adopt rules providing a 30-day public comment period for draft air quality permits for applications that are: subject to the federal air permitting provisions of 42 USC 7475 (attainment area major new source review), 7503 (nonattainment area major new source review), or 7661 (Title V operating permits for major sources); subject to the incinerator permitting provisions of 75-2-215, MCA; or that require preparation of an environmental impact statement (EIS). Based on the prior 60-day statutory timeline for the Department's decision on all air quality permit applications except those requiring preparation of an EIS, ARM 17.8.759(4)(b) now provides for a 15-day public comment period. The proposed amendments to ARM 17.8.759(4)(b) are necessary to implement the requirement in HB 427 to extend the public comment period from 15 days to 30 days for applications for permits for major sources, major modifications, and incinerators and for applications that require preparation of an EIS.

HB 427 also extended from 60 days to 75 days the timeline for the Department to notify the applicant for an air quality permit of approval or denial of the application if the application does not require preparation of an EIS and the application is subject to: the federal air permitting provisions of 42 USC 7475, 7503, or 7661; or the incinerator permitting provisions of 75-2-215, MCA. (HB 427 does not affect the timeline for notification when the owner or operator also is required to obtain a solid waste management system license or hazardous waste management facility permit.) The proposed amendments to ARM 17.8.759(4)(c) are necessary to implement the extended timeline under HB 427 for the Department's decision on applications for permits for major sources, major modifications, and incinerators.

ARM 17.8.749(7), 17.8.763(2) and (3), and 17.8.764(2) and (3), require service of the Department's decision to deny a permit application, revoke a permit, or make an administrative amendment as provided in the Montana Rules of Civil Procedure. Rule 4(D)(1) of the Montana Rules of Civil Procedure requires personal service by a sheriff, deputy sheriff, constable, or

other person over the age of 18. Personal service of the Department's decision to approve or deny a permit application or to revoke or amend a permit is not necessary. The proposed amendments to ARM 17.8.749(7), 17.8.763(2) and (3), and 17.8.764(2) and (3) would allow the Department to provide these notices by mail.

4. The Board will also take testimony on submission of the proposed amendments to EPA as proposed revisions to the State Implementation Plan (SIP).

5. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us, to be received no later than 5:00 p.m. August 6, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairperson

Reviewed by:

David Rusoff  
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, June 16, 2003.